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TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 68 BRANCH ESTABLISHMENTS AND FUNERAL ESTABLISHMENTS

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TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 68 BRANCH ESTABLISHMENTS AND FUNERAL ESTABLISHMENTS

68-001 SCOPE AND AUTHORITY: These regulations apply to licensure of branch establishments and funeral establishments as defined by Neb. Rev. Stat §§ 71-1301 to 71-1306 and §§71-1326 to 71-1354 and the Uniform Licensing Law.

68-002 DEFINITIONS

Act means Neb. Rev. Stat. §§ 71-1301 to 71-1306 and §§71-1326 to 71-1354 commonly known as the Practice of Funeral Directing and Embalming.

Attest/Attestation means that the individual declares that all statements on the application/petition are true and complete.

Board means the Board of Funeral Directing and Embalming.

Branch Establishment means a place of business situated at a specific street address or location which is a subsidiary of a licensed funeral establishment, which contains a casket display room, a viewing area, or an area for conducting funeral services, or all of them, and where any portion of the funeral service or arrangements for the disposition of a dead human body is conducted.

Burial means placing of a dead human body into a grave, tomb, crypt, mausoleum, or other final receptacle.

Casket means a receptacle for a dead human body and does not include vaults, lawn crypts, mausoleums, or other outside receptacles for caskets.

Completed Application means an application with all of the information requested on the application, the signature of the applicant, fees and all required documentation submitted.

Cremation means the technical process that uses heat and evaporation to reduce human remains to bone fragments.

Department means the Department of Health and Human Services Regulation and Licensure of the State of Nebraska.

Director means the Director of Regulation and Licensure or the Chief Medical Officer if one has been appointed pursuant to Neb. Rev. Stat. § 81-3201, for performance of the duties set out in that statute.

Disposition means entombment, burial, cremation or other means as approved by the Board.

Division means the Credentialing Division of the Department of Health and Human Services Regulation and Licensure of the State of Nebraska.

Electric-aspirator means an electrically powered aspirator which pulls material through the pump and discharges it into a flush bowl.

Establishment means a branch establishment or a funeral establishment.

Funeral Establishment means a place of business situated at a specific street address or location, devoted to the care and preparation for burial, disposition, or cremation or to conducting or arranging funeral services for dead human bodies.

Funeral Services means any rite or ceremony pertaining to a dead human body.

Hydro-aspirator means an aspirator, which uses water pressure through an adapter on a water faucet. It must have at least 2 vacuum breakers to prevent back siphoning into the water system.

Manager means the person named on the establishment license and who has full responsibility of all transactions of the establishment.

NAC means the Nebraska Administrative Code, the system for classifying State agency rules and regulations. These regulations are 172 NAC 68.

Preparation Room means a facility entirely enclosed by walls, floors and ceiling, at least 150 square feet, and used for the preparation of dead human bodies for final disposition.

Verified means sworn to before a Notary Public.

68-003 REQUIREMENTS FOR ISSUANCE OF A BRANCH ESTABLISHMENT OR FUNERAL ESTABLISHMENT LICENSE: Any person who wishes to operate a Branch Establishment or Funeral Establishment must obtain a license. Funeral establishments may be licensed for one or a combination of the following services:

1. The care and preparation for burial, disposition, or cremation;
2. Conducting funeral services for dead human bodies; or
3. Arranging funeral services for dead human bodies.

The criteria for issuance of a license and the documentation required by the Department and the Board are set forth below.

68-003.01 Initial Establishment Licensure Requirements

68-003.01A Requirement: An applicant for an initial license to operate an establishment must meet the following:

1. Have a current active Nebraska Funeral Director's or Funeral Director and Embalmer's license and be the proposed manager;
2. The proposed manager must have good moral character;
3. If the application is for a branch establishment, the branch establishment must be affiliated with a funeral establishment;
4. Have received a successful rating on the initial inspection; and
5. Submit the application at least 30 days before the anticipated opening date to allow for an initial inspection to be conducted.

68-003.01B Application Process: The following must be submitted to the Department:

1. A completed application on Attachment A attached to these regulations and incorporated by this reference. The application must specify the types(s) of services to be provided. Only applications which are complete will be considered;
2. Attestation by the applicant:
 - a. That s/he has not operated this establishment in Nebraska prior to the application for a license; or
 - b. To the actual number of days operated this establishment in Nebraska prior to the application for a license;
3. Conviction and Licensure Information Relating to the Manager:
 - a. If the manager has been convicted of a misdemeanor or felony:
 - (1) Official Court Record, which includes charges and disposition;
 - (2) Copies of arrest records;
 - (3) A letter from the applicant explaining the nature of the conviction;
 - (4) All addiction/mental health evaluations and proof of treatment;
 - (5) A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation;
 - b. If the manager holds a license in another state(s), the name of such state(s);
 - c. If any disciplinary action was taken against the manager's license by another state, an official copy of the disciplinary action, including charges and disposition; and
4. Identify the type of service(s) to be provided; and

5. The required license fee.

68-003.01C Department Responsibilities: The Department will:

1. Review the application to determine completeness;
2. Acknowledge receipt of the application by means of a written letter to the applicant with a copy to the appropriate establishment inspector;
 - a. The inspector will contact the applicant and schedule an inspection to be completed prior to the anticipated opening date. The results of the inspection will be recorded on an inspection form provided by the Department.
3. Administrative Penalty/Other Action: Assess an Administrative Penalty pursuant to 172 NAC 68-018, or such other action as provided in the statutes and regulations governing the credential to an individual who operates an establishment prior to issuance of a credential; and
4. Issue an establishment license to each establishment which meets the requirements as defined in this section, within 150 days of receipt of a completed application. The license will indicate the types of services provided by the funeral establishment.

68-003.02 Amended License for Existing Establishments: Any establishment may amend its license, due to a change in establishment manager, name of the establishment, change in location of the establishment, change of services provided, or change in the manager due to the death of the manager. The criteria for issuance of an amended license and the documentation required by the Department and the Board are set forth below.

68-003.02A Change in Establishment Manager or Establishment Name

68-003.02A1 Requirements: An applicant for an amended license to operate an establishment, due to a change of manager or establishment name, must:

1. Have a current active Nebraska Funeral Director's or Funeral Director and Embalmer's license and be the proposed manager;
2. If applying for a change in manager, the manager must:
 - a. Be of good moral character;
 - b. Surrender the original license of the establishment; and
3. Submit the application at least 15 days before the anticipated change.

68-003.02A2 Application Process: The following must be submitted to the Department:

1. A completed application on Attachment B attached to these regulations and incorporated by this reference. Only applications, which are complete, will be considered;
2. If a manager change, the original license of the establishment;
3. Conviction and Licensure Information Relating to the Manager:
 - a. If the manager has been convicted of a misdemeanor or felony:
 - (1) Official Court Record, which includes charges and disposition;
 - (2) Copies of arrest records;
 - (3) A letter from the applicant explaining the nature of the conviction;
 - (4) All addiction/mental health evaluations and proof of treatment;
 - (5) A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation;
 - b. If the manager holds a license in another state(s), the name of such state(s);
 - c. If any disciplinary action was taken against the manager's license by another state, an official copy of the disciplinary action, including charges and disposition; and
4. The required license fee.

68-003.02A3 Department Responsibilities: The Department will:

1. Review the application to determine completeness; and
2. Issue an establishment license to each establishment which meets the requirements as defined in this section, within 150 days of receipt of a completed application.

68-003.02B Change in Manager Due to the Death of a Manager

68-003.02B1 Requirements: An applicant for an amended license due to the death of a manager of a funeral establishment must:

1. Have a current active Nebraska Funeral Director's or Funeral Director and Embalmer's license and be the proposed manager;

2. The manager must:
 - a. Be of good moral character;
 - b. Surrender the original license of the establishment; and
3. Submit the application immediately following the death of the manager.

68-003.02B2 Application Process: The following must be submitted to the Department:

1. A completed application on Attachment B. Only applications which are complete will be considered;
2. The required license fee;
3. The original license of the establishment;
4. A copy of the death certificate of the previous manager of the establishment; and
5. Conviction and Licensure Information Relating to the Manager:
 - a. If the manager has been convicted of a misdemeanor or felony:
 - (1) Official Court Record, which includes charges and disposition;
 - (2) Copies of arrest records;
 - (3) A letter from the applicant explaining the nature of the conviction;
 - (4) All addiction/mental health evaluations and proof of treatment;
 - (5) A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation;
 - b. If the manager holds a license in another state(s), the name of such state(s);
 - c. If any disciplinary action was taken against the manager's license by another state, an official copy of the disciplinary action, including charges and disposition.

68-003.02B3 Department Responsibilities: The Department will:

1. Review the application to determine completeness; and

2. Issue an establishment license to each establishment, which meets the requirements as defined in this section, within 150 days of receipt of a completed application.

68-003.02C Change of Establishment Location

68-003.02C1 Requirements: An applicant for an amended license, due to a change in the establishment's location, must:

1. Have a current active Nebraska Funeral Director's or Funeral Director and Embalmer's license and be the proposed manager;
2. Have received a successful inspection rating within 30 days of the anticipated opening date; and
3. Submit the application at least 30 days before the anticipated opening date to allow for an inspection to be conducted.

68-003.02C2 Application Process: The following must be submitted to the Department:

1. A completed application on Attachment B. Only applications which are complete will be considered;
2. Attestation by the applicant:
 - a. That s/he has not operated this establishment in Nebraska prior to the application for a license; or
 - b. To the actual number of days operated this establishment in Nebraska prior to the application for a license; and
3. The required license fee.

68-003.02C3 Department Responsibilities: The Department will:

1. Review the application to determine completeness;
2. Acknowledge receipt of the application by means of a written letter to the applicant with a copy to the appropriate establishment inspector;
 - a. The inspector will contact the applicant and schedule an inspection to be completed prior to the anticipated opening date. The results of the inspection will be recorded on a form provided by the Department; and
3. Administrative Penalty/Other Action: Assess an Administrative Penalty pursuant to 172 NAC 68-018 or such other action as provided in the statutes and regulations governing the credential to an individual who

operates an establishment which has changed the location prior to issuance of a credential; and

4. Issue an establishment license to each establishment which meets the requirements as defined in this section, within 150 days of receipt of a completed application. The license will indicate the types of services provided by the funeral establishment.

68-003.02D Change in Types of Services Provided

68-003.02D1 Requirements: An applicant for an amended license, due to a change in the establishment's services either adding or deleting the services of care and preparation for burial, disposition, or cremation or conducting or arranging funeral services for dead human bodies, must:

1. Have a current active Nebraska Funeral Director's or Funeral Director and Embalmer's license and be the proposed manager;
2. Have received a successful inspection rating within 30 days of the anticipated change in services if the establishment will be providing the care and preparation for burial, disposition, or cremation - an inspection is not required if the establishment will be conducting or arranging funeral services for dead human bodies; and
3. Submit the application at least 30 days before the anticipated change in services to allow for an inspection to be conducted.

68-003.02D2 Application Process: The following must be submitted to the Department:

1. A complete application on Attachment A; and
2. The required license fee.

68-003.02D3 Department Responsibilities: The Department will:

1. Review the application to determine completeness;
2. Acknowledge receipt of the application by means of a written letter to the applicant with a copy to the appropriate establishment inspector;
 - a. The inspector will contact the applicant and schedule an inspection to be completed prior to the anticipated date of the change in services. The results of the inspection will be recorded on a form provided by the Department; and

3. Issue an establishment license to each establishment which meets the requirements as defined in this section within 150 days of receipt of a completed application.

68-003.03 License Display: Each manager must conspicuously display the establishment license in the branch establishment and/or funeral establishment.

68-003.04 Establishment Manager Responsibilities: The designated manager is responsible for all transactions conducted at the establishment, in compliance with the statutes, rules and regulations relating to funeral directing and embalming and establishments.

68-003.05 License Not Transferable: A license is issued only for the premises and manager named in the application and is not transferable or assignable. Change of manager, name, or location terminates the license.

68-004 USE OF NAMES OF LICENSED PERSONNEL ONLY IN CONDUCTING OR ADVERTISING A FUNERAL ESTABLISHMENT: A funeral establishment must not use any name which would mislead the public or use the name of any person not currently licensed as an embalmer or funeral director in connection with or as a part of the name of any funeral establishment. A name may not be used in any manner so as to mislead the public to believe that an unlicensed person is a licensed embalmer or funeral director. This rule does not prohibit the use of the name of any deceased person who, when alive, was a licensed embalmer or funeral director, in connection with or as a part of the name of a funeral establishment in the State of Nebraska.

68-005 STATEMENT OF SERVICES: A written statement, signed by the funeral director and embalmer or legal representative, of all principal services and furnishings to be supplied by the funeral director and embalmer for the preparation and burial or cremation of the deceased, together with the actual total cost, must be given to the next of kin or other person responsible for the making of the funeral arrangements prior to the burial or disposition of the deceased. A copy of such statement, signed by the person to whom it was tendered, must be retained in the records of the funeral director and embalmer for a period of at least two years.

68-006 REMOVALS OR FIRST CALLS: Except in those instances in which removals are performed by public authorities in emergency situations, first calls or removals of dead human bodies must be conducted only by persons licensed as embalmers or funeral directors in the State of Nebraska or pursuant to the direction of a licensed embalmer or funeral director. When a licensed embalmer or funeral director directs another to make a first call or removal of a dead human body, he accepts, in every manner, full responsibility for all aspects of the first call or removal.

68-007 AUTHORIZED SERVICES OF AUXILIARY PERSONNEL:

1. A licensed funeral director and embalmer must be in charge of each funeral service, in person, whenever a dead human body is present. No person who is not licensed as an funeral director and embalmer, or serving as an apprentice, will embalm dead human bodies for burial or cremation. Persons who are not licensed as funeral directors and embalmers may assist in implementing arrangements made by a licensed funeral director and embalmer as long as they are under his/her direct on-site supervision and responsibility.
2. At the direction of a licensed funeral director and embalmer, auxiliary personnel may make first calls or removals of dead human bodies as per 172 NAC 68-006.

68-008 TRANSPORTATION AND DISPOSAL OF DEAD HUMAN BODIES

68-008.01 Bodies Dead of a Communicable Disease: Bodies dead of any communicable disease listed as such by the Center for Disease Control (CDC) must be completely wrapped before removal from the premises.

1. Bodies dead of communicable diseases listed by the CDC must be thoroughly and promptly embalmed and will be held in isolation from the public for a period of 24 hours following the embalming.
2. All bodies dead of any of the communicable diseases listed by CDC and which are not promptly and completely embalmed must be encased immediately after death in a metal or metal lined and hermetically sealed container, and under no condition will the body be removed from the container.
3. This rule does not prohibit a public funeral, nor does it relieve persons who are quarantined as contacts from quarantine requirements.

Bodies dead of a communicable disease other than those contained in the CDC list require no further special handling in the event that they are embalmed.

68-008.02 Interstate Transportation: In case a body is to be transported out of the state the person or persons in charge of the body must determine the regulations governing the transportation of bodies in the other state, or states, and must comply fully with the requirements of such regulations, in addition to the requirements provided by 172 NAC 68. They will further comply with all requirements of the common carrier and of the Interstate Commerce Commission.

68-008.03 Intrastate Transportation of Bodies Dead of a Cause Other Than a Communicable Disease:

1. Un-Embalmed Bodies:

- a. Dead human bodies, which have not been embalmed, must not be transported by common carrier. Transportation may be made by privately owned conveyance under the supervision and responsibility of a licensed Funeral Director.
- b. The un-embalmed body must be embalmed, buried, or cremated within 24 hours following death, provided, however, that an un-embalmed body may be retained in storage at a constant temperature of less than 40 degrees Fahrenheit for not more than 72 hours. When such a body is removed from storage and transported it must be embalmed, buried, or cremated within 24 hours following the removal from storage.
- c. In the event the body is placed in a metal or metal lined hermetically sealed container immediately after death it may be considered for the purpose of transporting the same as an embalmed body.

2. Embalmed Bodies: There are no additional restrictions to the transportation of embalmed bodies other than those contained in the existing Nebraska statutes, provided the body is embalmed by arterial and cavity injection using current accepted practice and chemicals.

- a. Exception: In the event the remains are to be sent to the State Anatomical Board, cavity work should be avoided when possible.

68-008.04 General Rule Relating to Final Disposal of Dead Human Bodies: In all instances final disposition of a dead human body which has been embalmed must be made within 30 days after death, unless special permission in writing granting otherwise has been obtained from the Director of Regulation and Licensure. If death did not occur in Nebraska, final disposition of a dead human body must be made within 30 days after receipt of the dead human body.

68-009 REQUIREMENTS FOR FUNERAL ESTABLISHMENT INSPECTIONS: All funeral establishments will receive an initial and thereafter, a renewal inspection. The criteria for inspection required by the Department and Board is set forth below.

68-009.01 Documents Reviewed: The following documents will be reviewed during each inspection:

1. Current license of the funeral establishment on display;

2. Current license of the manager and all licensed embalmers, registered apprentices, and licensed funeral directors employed by the funeral establishment;
3. A sign which displays the name of the current or proposed funeral establishment. The sign must be located on or at the front of the building in a position that it clearly is visible and legible from the outside of the building, or provide documentation that it is on order; and
4. Copies of written statements containing a list of principal services and furnishings to be supplied by the funeral director or funeral director and embalmer for the preparation and burial or cremation of a deceased body (i.e., general price list).

68-009.02 Physical Structure Review: The physical structure must be maintained to ensure safety of the public and the inspector inspecting the funeral establishment to ensure compliance with the equipment and sanitation requirements.

1. If services will include conducting or arranging funeral services for dead human bodies, the funeral establishment must contain:
 - a. A room(s) for counseling families or next of kin, conducting of a funeral service for dead human bodies, and/or for viewing of the deceased. The room(s) must have floor to ceiling walls on all sides, and must be either a part of the funeral establishment or located at a licensed branch establishment, which is within a reasonable distance of the funeral establishment. The room(s):
 - (1) Must have space for public seating;
 - (2) Must have space for viewing the deceased body; and
 - (3) May have an adjacent area for cosmetic services and dressing of the deceased body for viewing purposes.
2. If services include conducting or arranging funeral services for dead human bodies, the funeral establishment must include motor vehicles, such as, but not limited to: funeral coach, sedans, and vans.
3. If services include the care and preparation for burial, disposition, or cremation, the funeral establishment must include:
 - a. A preparation room for preparing dead human bodies for burial or other final disposition. The preparation room must have floor to ceiling walls on all sides and must be at least 150 square feet (square footage does not apply to establishments licensed before the effective date of these regulations). The preparation room must contain the following:
 - (1) Flooring and walls that are cleanable, such as tile or other suitable hard surface;
 - (2) Adequate drainage, lighting, and ventilation;

- (3) At least two sinks:
 - (a) One for washing of hands and instruments;
 - (b) One for use of drainage from the embalming table and for use with the aspirator;
 - (4) Cots/stretchers and adequate linens and covers;
 - (5) Fully closing doors;
 - (6) The following instruments and supplies with ample storage thereof:
 - (a) Head covers;
 - (b) Shoe covers;
 - (c) Goggles;
 - (d) Masks;
 - (e) Heavy duty or surgical gloves;
 - (f) Disinfectant spray;
 - (g) Adequate materials for use with contagious diseases (contagious disease kit);
 - (h) Embalming Gown with sleeves;
 - (7) The following instruments and supplies with ample storage thereof, kept in a sanitary condition:
 - (a) Porcelain or stainless steel embalming table;
 - (b) Embalming machine;
 - (c) Hydro or electrical aspirator with arterial tubes and drain tubes;
 - (d) Pair of spring forceps;
 - (e) Aneurysm needles;
 - (f) Pair of scissors;
 - (g) Different sizes of suture needles;
 - (h) Scalpel with extra blades;
 - (i) Razor with extra blades;
 - (j) Trocar with suitable length of hose;
 - (k) Cavity Fluid Injector;
 - (l) Sanitary and medical waste container;
 - (m) Arm and head supports; and
 - (n) Cavity, special and arterial fluids.
4. The funeral establishment must have adequate lighting to maintain public safety.

68-009.02A Materials or supplies which come in contact with a dead human body must not be used more than once without being first completely cleansed, disinfected, and then laundered.

68-009.02B Bandages, cotton, and other waste materials must be destroyed immediately at the conclusion of each case to the end that all disease-producing organisms are destroyed and the public health thereby protected.

68-009.02C All equipment within a motor vehicle used for the transportation of deceased persons, which comes in contact with a deceased person, must be thoroughly disinfected immediately at the conclusion of each instance of transportation

to the end that all disease producing organisms are destroyed and the public health thereby protected.

68-009.03 Inspector Responsibilities: The inspector will record the results of the inspection on the inspection report, distribute a final copy of the inspection report to the manager of the funeral establishment at the conclusion of the inspection, and forward a final copy of the inspection report to the Department.

68-009.04 Department Responsibilities: The Department will maintain copies of all current inspection reports.

68-009.05 Timing of Inspections: The Department may conduct an on-site inspection at any time it deems necessary.

68-009.06 Renewal Selection Inspections: Every two years, the Department may conduct an inspection of up to 25% of the establishments based on a random selection.

68-009.07 Focused Selection Inspections: The Department may conduct an inspection of an establishment when the Department is informed of one or more of the following:

1. The passage of 6 years without an inspection;
2. A complaint alleging a violation of 172 NAC 68-009.01 to 68-009.02;
3. Change of services or location; and
4. Any other event that raises concerns about the maintenance or management of the establishment.

68-010 REQUIREMENTS FOR BRANCH FUNERAL ESTABLISHMENT INSPECTIONS: All branch establishments will receive an initial and renewal inspection and must maintain a level of cleanliness to assure public health and safety. The criteria for inspection required by the Department and Board is set forth below.

68-010.01 Documents Reviewed: The following documents will be reviewed during each inspection:

1. Current license of the branch establishment on display;
2. Current license of the manager and all licensed personnel practicing at the branch establishment location;
3. A sign which displays the name of the current or proposed branch establishment. The sign must be located on or at the front of the building in such a position that it clearly is visible and legible from the outside of the building, or provide documentation that it is on order; and
4. If funeral arrangements are made at the branch location, copies of written statements containing a list of principal services and furnishings to be supplied

by the funeral director or funeral director and embalmer for the preparation and burial or cremation of a deceased body (i.e., general price list).

68-010.02 Physical Structure Review: The physical structure must be maintained to ensure safety of the public and the inspector will inspect the branch establishment to ensure compliance with the equipment and sanitation requirements. The branch establishment must contain:

1. Space for viewing the deceased body. The room(s) will have floor to ceiling walls on all sides;
2. Adequate ventilation; and
3. Adequate lighting to maintain public safety.

68-010.03 Casket Selection Area: The branch establishment must have a casket selection area, which provides either a catalogue or merchandise.

68-010.04 Inspector Responsibilities: The inspector will record the results of the inspection on the inspection report, distribute a final copy of the inspection report to the manager of the funeral establishment at the conclusion of the inspection, and forward a final copy of the inspection report to the Department.

68-010.05 Department Responsibilities: The Department will maintain copies of all current inspection reports.

68-010.06 Renewal Inspection: An unannounced inspection will be conducted to ensure that the establishment is maintained in a clean and sanitary condition; and to ensure that it adheres to all statutes, rules, and regulations. Renewal inspections will be conducted in accordance with 172 NAC 68-010.01 through 68-010.05. Inspections may occur more frequently if the Board deems appropriate.

68-011 CRITERIA FOR SUCCESSFUL COMPLETION OF AN ESTABLISHMENT INSPECTION: Each applicant for an establishment license must successfully complete an inspection to receive a license to operate. The criteria for successful completion of inspections are set forth below:

68-011.01 Criteria for Successful Completion of an Initial Inspection

68-011.01A The inspector will record a rating of "Satisfactory or Unsatisfactory" on the inspection report.

68-011.01B The inspector will record a rating of "Satisfactory" on the initial inspection when the establishment receives an overall inspection rating of 90% or greater and an "Unsatisfactory" on the initial inspection when the establishment receives an overall inspection rating of less than 90% or if the inspector believes there is a severe health risk to the public.

1. When an applicant receives a rating of "Unsatisfactory", the applicant must not operate the establishment and may, at the discretion of the inspector, be granted 30 days from the date of the initial inspection to meet the requirements.
2. The inspector will conduct a re-inspection within 30 days of receipt of verification that all corrections cited on the inspection report are corrected, documented on a form provided by the Department.
3. If the establishment receives a "Satisfactory" rating after re-inspection, the inspector will change the "Unsatisfactory" rating and enter a "Satisfactory" rating.
4. If the establishment receives an "Unsatisfactory" rating after the re-inspection, the Department will deny the applicant the issuance of a license to operate an establishment.

68-011.02 Criteria for Successful Completion of a Renewal Inspection

68-011.02A The inspector will issue a rating of "Satisfactory" on all renewal inspections when the establishment receives an overall inspection rating of 90% or greater.

68-011.02B The inspector will issue a rating of "Unsatisfactory" on all renewal inspections when the funeral establishment receives an overall inspection rating of less than 90%.

1. When an establishment receives a rating of "Unsatisfactory" the designated manager may at the discretion of the inspector be granted 30 days from the date of the initial inspection to meet the requirements.
 - a. Upon completion of corrective action, the establishment manager must contact the Department and advise of compliance with the deficiencies noted on the inspection report.
2. The inspector will conduct a re-inspection of the establishment within 30 days of receipt of the notice of compliance by the establishment manager.
 - a. If the establishment meets the requirements at the time of re-inspection, the inspector will change the "Unsatisfactory" rating and enter a "Satisfactory" rating.
 - b. If the establishment receives an "Unsatisfactory" rating after the re-inspection, the Department will, within 10 days of the completion of the re-inspection, give notice to the establishment that the license is suspended in accordance with Neb. Rev. Stat. §71-1330.01 and 71-1330.02. Such notice will be in written form and will:
 - (1) State that the establishment license is suspended;

- (2) State the reasons for the establishment license suspension;
 - (3) State that the establishment license suspension will become final 30 days after the mailing of the notice of suspension unless the manager submits a written request for a hearing within such 30 day period; and
 - (4) Be sent to the manager by certified mail.
 - c. Upon receipt of a written request for a hearing, the manager will be given a hearing before the Department in accordance with the Administrative Procedure Act.
 - d. The Department's decision regarding the suspension of the license will become final 30 days after a copy of the decision is mailed to the manager, unless the manager appeals the decision pursuant to Neb. Rev. Stat. §71-1333.03.
3. When an establishment license is suspended for failure of a renewal inspection, the establishment must reapply to the Department for a license to operate as specified in 172 NAC 68-003.

68-012 CLOSING AN ESTABLISHMENT: When an establishment manager anticipates closing for business, the Department must be notified in writing at least 30 days before the closing date. Such notification must state the anticipated closing date. The Department will then change its records to reflect the current status of the establishment. The establishment must retain the establishment's records until resale or it may forward the establishment's records to another funeral establishment within the same town/city.

68-013 PROCEDURES FOR RENEWAL OF A LICENSE: All licenses issued by the Department under the Act and these regulations expire on February 1 of each even-numbered year.

68-013.01 Renewal Process: Any licensee who wishes to renew his/her establishment license must:

1. Pay the renewal fee as prescribed in 172 NAC 68-017; and
2. Cause to be submitted to the Department:
 - a. The renewal notice; and
 - b. The renewal fee.

68-013.02 First Notice: At least 30 days before November 1 of each odd-numbered year, the Department will send a renewal notice by means of regular mail to each licensee at the licensee's last place of operation as noted in the records of the Department.

68-013.02A The renewal notice must specify:

1. The name of the licensee;
2. The licensee's last known address of record;
3. The license number;
4. The expiration date of the license; and
5. The renewal fee as prescribed in 172 NAC 68-017.

68-013.02B The licensee must apply for renewal by submitting to the Department:

1. The renewal notice; and
2. The renewal fee;

68-013.03 Second Notice: The Department must send to each licensee who fails to renew his/her establishment license in response to the first notice a second notice of renewal in accordance with the requirements of 172 NAC 68-013.01 that specify:

1. That the licensee failed to pay the renewal fee;
2. That the license has expired;
3. That the Department will suspend action for 30 days following the date of expiration;
4. That upon receipt of the renewal fee, together with an additional late fee of \$25, no order of revocation will be entered; and
5. That upon failure to receive \$25 in addition to the regular renewal fee, the license will be revoked as specified in 172 NAC 68-014.

68-013.03A The licensee must apply for renewal by submitting to the Department:

1. The renewal notice;
2. Attestation by the licensee:
 - a. That s/he has not operate the establishment in Nebraska since the expiration of its license; or
 - b. To the actual number of days s/he operated the establishment in Nebraska since the expiration of its license; and
3. The renewal fee and the additional late fee of \$25.

68-013.04 When any licensee fails, within 30 days of expiration of a license, to pay the renewal fee and/or to pay an additional late fee of \$25, the Department will automatically revoke the license without further notice of hearing and makes proper record of the revocation.

68-013.05 The Department may refuse to renew a license for falsification of any information submitted for renewal of a license or for other grounds as specified in Neb. Rev. Stat. §71-1333.01. The refusal must be made pursuant to Neb. Rev. Stat. §§ 71-1333.01 and 184 NAC 1, Rules of Practice and Procedure of the Department.

68-13.06 Administrative Penalty/Other Action: An individual who operates an establishment after the expiration of a credential is subject to assessment of an Administrative Penalty pursuant

to 172 NAC 68-018, or such other action as provided in the statutes and regulations governing the credential.

68-014 CREDENTIAL REVOCATION FOR FAILURE TO MEET RENEWAL REQUIREMENTS:

The Department may revoke a credential when the credential holder fails to meet the renewal requirements.

68-014.01 Revocation for Nonpayment of Renewal Fee or Late fee within Thirty Days of Expiration of the Credential:

68-014.01A When a credential holder fails to pay the required renewal fee and/or to pay a late fee of \$25 within 30 days of its expiration, the Department automatically revokes the credential without further notice or hearing.

68-014.01A1 The Department will send a post revocation notice which will specify that:

1. The credential holder was given a first and final notice of renewal requirements and the respective dates for these notices;
2. The credential failed to renew the credential;
3. Department has revoked the credential; and
4. The credential holder has a right to request reinstatement of the credential.

68-015 RE-CREDENTIALING: This section applies to individuals previously issued a Nebraska credential who have lost the legal authority to operate an establishment in total or in part and who seek the authority to return to operation in Nebraska with a valid Nebraska credential.

68-015.01 Eligibility

68-015.01A An establishment whose credential has been previously:

1. Revoked for failure to meet the renewal requirements; or
2. Suspended, limited or revoked for disciplinary reasons;

may request, at any time, to be re-credentialed and re-authorized to operate under the credential, in accord with these regulations.

68-015.01B An establishment whose credential has been revoked for disciplinary reasons may apply for reinstatement only after a period of two years has elapsed from the date of revocation.

68-015.01C An establishment which operates prior to re-credentialing is subject to:

1. Assessment of an Administrative Penalty pursuant to 172 NAC 68-018; and
2. Limitation or other sanction on the credential, or denial of the request to be re-

credentialed and re-authorized to operate under the credential, and referral for prosecution for uncredentialed operation, as provided in the statutes and regulations governing the credential.

68-015.02 Requirements for Reinstatement Within One Year Following Revocation for Failure to Meet the Renewal Requirements: An applicant for reinstatement who applies not more than one year following revocation for failure to meet renewal requirements must:

1. Meet the renewal requirements, including:
 - a. Paying the renewal fee, the late fee of \$35 and any other applicable fees; and
2. Attest:
 - a. That s/he has not operated the establishment in Nebraska since it last held an active credential; or
 - b. To the actual number of days s/he operated the establishment if the applicant has operated in Nebraska since it last held an active credential.

68-015.03 Procedures for Reinstatement Within One Year Following Revocation for Failure to Meet the Renewal Requirements: To reinstate a credential not more than one year following revocation for failure to meet renewal requirements, the applicant must submit the following to the Department:

1. A written application which contains the following information about the applicant:
 - (1) Name; and
 - (2) Address.
2. The renewal fee, the late fee of \$35 and any other applicable fees.
3. Attestation by the applicant:
 - a. That s/he has not operated the establishment in Nebraska since it last held an active credential; or
 - b. To the actual number of days operated if the applicant has operated the establishment in Nebraska since it last held an active credential.
 - (1) If an applicant has operated the establishment after its credential was revoked the Department may assess an Administrative Penalty pursuant to 172 NAC 68-018 in which case a notice and opportunity for hearing will be sent to the applicant.
 - (2) If an applicant has operated the establishment after his/her credential was revoked, or has committed any other violation of the statutes and regulations governing the credential, other action may be taken pursuant to 172 NAC 68-015.03B below.

The Department will forward the application to the Board for its recommendation pursuant to Neb. Rev. Stat. § 71-110 (5).

68-015.03A The Board's recommendation to the Department may be to:

1. Reinstate the credential;
2. Reinstate the credential with terms, conditions or restrictions; or
3. Deny reinstatement.

68-015.03B Upon receipt of the Board's recommendation, the Department will, within 150 days, send to the applicant a written notice of the Department's response. The Department may:

1. Reinstate the credential. An Administrative Penalty may be assessed pursuant to 172 NAC 68-018 if warranted;
2. If the Department determines that the applicant has committed acts or offenses prohibited by Neb. Rev. Stat. §§ 71-147 or 71-148, the Department may:
 - a. Reinstate the credential with terms, conditions, or restrictions. In such case the applicant will be provided notice and the opportunity for hearing before the Department pursuant to the Department's Rules of Practice and Procedure and Neb. Rev. Stat. §§ 84-901 to 84-920. An Administrative Penalty may be assessed pursuant to 172 NAC 68-018 if warranted; or
 - b. Deny reinstatement. In such case the applicant will be provided notice and the opportunity for hearing before the Department pursuant to the Department's Rules of Practice and Procedure and Neb. Rev. Stat. §§ 84-901 to 84-920.

68-015.04 Reapplication After One Year of Revocation for Non-Payment of the Renewal Fee: An establishment whose license has been revoked for non-payment of renewal fees may reapply to the Department for licensure after one year of revocation as set forth in 172 NAC 68-003.

68-015.05 Reapplication After Disciplinary Action: An establishment whose license has been limited, suspended, or revoked for disciplinary action may reapply to the Department for licensure as set forth in 172 NAC 68-003.

68-015.06 Voluntarily Surrendered License:

1. Credentials voluntarily surrendered or limited for an indefinite period of time pursuant to Neb. Rev. Stat. §71-161.11 may be restored at the discretion of the Department.
2. Credentials voluntarily surrendered or limited for a specific and definite period of time as agreed to between the holder and Department pursuant to Neb. Rev. Stat. § 71-161.11 will be automatically restored at the expiration of that period of time.
 - a. If an individual has operated the establishment while his/her credential was voluntarily surrendered for a specific and definite period of time, the Department may assess an Administrative Penalty pursuant to 172 NAC 68-018.
3. Credentials that are voluntarily surrendered or limited permanently pursuant to Neb. Rev. Stat. § 71-161.11 will not be restored.

68-016 GROUND ON WHICH THE DEPARTMENT WILL DENY, REFUSE RENEWAL OF, OR DISCIPLINE AN ESTABLISHMENT LICENSE

68-016.01 The Department will deny an application for an establishment license when the manager fails to meet the requirements for a license as specified in 172 NAC 68-003.

68-016.02 The Department will refuse renewal of an establishment license if the manager fails to meet the requirements specified in 172 NAC 68-013.

68-016.03 The Department will deny an application, revoke or suspend, or refuse renewal of an establishment license for any of the following grounds:

1. Conviction of any crime involving moral turpitude.
2. Obtaining a license as a funeral establishment or branch establishment by false representation or fraud.
3. Operating a funeral establishment or branch establishment without a manager responsible for the operations of the establishment.
4. A conviction of a violation of any of the provisions of Neb. Rev. Stat. §71-147, or 71-148, 71-1301 to 71-1306, and 71-1326 to 71-1354.
5. Unprofessional conduct, which is hereby defined to include:
 - a. Misrepresentation or fraud in the conduct of a funeral establishment or branch establishment; or
 - b. Aiding or abetting an unlicensed person to practice funeral directing and embalming.
6. Violation of 172 NAC 67 and 68.
7. Misrepresentation or fraud in the conduct of an establishment.
8. Using the name of any person not currently licensed as a funeral director and embalmer in connection with or as part of the name of any funeral establishment. A name may not be used in any manner so as to mislead the public to believe that an unlicensed person is a licensed embalmer or funeral director, provided however, that this rule will not prohibit the use of the name of any deceased person who, when alive, was a licensed embalmer or funeral director, in connection with or as a part of, the name of a funeral establishment in the State of Nebraska.
9. Aiding or abetting an unlicensed person to practice funeral directing and embalming.

68-016.04 The Department will deny an application, revoke, limit, suspend, refuse renewal, or take other disciplinary measures against an application or license pursuant to section 71-

155 if the applicant or manager of an establishment is found guilty of any of the acts specified in section 71-147 and 71-148 or the following acts or offenses:

1. Solicitation of dead human bodies by the licensee or his/her agents, assistants, or employees, either prior to or following death.
2. Purchasing of funeral or embalming engagements or the payment of a commission either directly or indirectly or offer of payment of such commission to any agent, assistant, or employee for the purpose of securing business.
3. Using indecent, profane, or obscene language in the presence of a dead human body or within the immediate presence or hearing of the family, relatives, or friends of the deceased prior to the burial of the deceased.
4. Soliciting or accepting any remuneration, commission, bonus, or rebate in consideration of the recommending or causing a dead human body to be placed in any crematory, mausoleum, or cemetery.
5. Using any casket or part thereof which has previously been used as a receptacle for, or in connection with, the shipment, burial, or other disposition of a dead human body without first identifying the item as used.
6. Violations of any state law, municipal ordinance, or any rule or regulation of the Department or other body having regulatory powers, relating to the handling, custody, care, or transportation of dead human bodies.
7. Refusal to surrender promptly the custody of a dead human body upon request of a person or persons lawfully entitled to the custody thereof.
8. Taking undue advantage of a patron or patrons, or being found guilty of fraud, or misrepresentation in the selling of merchandise or service to patrons.

68-016.05 A licensee who commits any of the following acts or otherwise violates any of the following provisions shall be guilty of a Class II misdemeanor:

1. Paying directly or indirectly any money or other thing of value as a commission or gratuity for the securing of business.
2. The buying of business of any person, firm, or corporation, or the paying of a commission to any person, firm or corporation or to any hospital or any institution where death occurs, or to any hospital superintendent, nurse, intern or other employee, whether directly or indirectly.
3. Willful malpractice.

68-016.06 If the department determines to deny the application for a license as or to revoke, suspend, or refuse renewal of the license of a funeral establishment or branch establishment, it shall send to the applicant or licensee, by certified mail, a notice setting forth the particular reasons for the determination.

Any manager shall have the right of appeal from an order of the department denying, revoking, suspending, or refusing renewal of a funeral establishment license or branch establishment license. The appeal shall be in accordance with the Administrative Procedure Act.

68-017 SCHEDULE OF FEES: The following fees have been set by the Department:

68-017.01 Initial License Fee: By an applicant for a license to operate:

1. A funeral establishment, the fee of \$25.
2. A branch establishment, the fee of \$20.

68-017.02 License Renewal Fee: By an applicant for renewal on a biennial basis of a license to operate:

1. A funeral establishment, the fee of \$25.
2. A branch establishment, the fee of \$20.

68-017.03 Name Change Fee: By an applicant for an amended license to operate a Funeral establishment or a branch establishment, due to a change in the establishment name the fee of \$10.

68-017.04 Relocation Fee: By an applicant for an amended license to operate a funeral establishment or branch establishment, due to the relocation of the establishment, the fee of \$25.

68-017.05 Change in Manager Fee: By an applicant for an amended license to operate a funeral establishment or branch establishment, due to a change in manager, the fee of \$10.

68-017.06 Renewal Late Fee: By an applicant for renewal on a biennial basis of a license, who fails to pay the renewal fee on or before the expiration date of the license, the fee of \$25 as a late fee in addition to the renewal fee.

68-017.07 Certification of License Fee: For issuance of a certification of a license, the fee of \$25. The certification includes information regarding:

1. The basis on which a license was issued;
2. The date of issuance;
3. Whether disciplinary action has been taken against the license; and
4. The current status of the license.

68-017.08 Verification of License Fee: For issuance of a verification of a license, the fee of \$5. The verification includes written confirmation as to whether a license was valid at the time the request was made.

68-017.09 Duplicate License Fee: For a duplicate of original license document or reissued license, the fee of \$10.

68-017.10 Administrative Fee: For a denied license or a withdrawn application, the administrative fee of \$25 will be retained by the Department, except if the licensing fee is less

than \$25, the fee will be forfeited.

68-017.11 Reinstatement Late Fee: For reinstatement of a license for failure to meet the renewal requirements within one year, the fee of \$35 in addition to the renewal fee.

68-018 ADMINISTRATIVE PENALTY: The Department may assess an administrative penalty when evidence exists that a person or entity practices without a credential. Practice without a credential for the purpose of this regulation means practice:

1. Prior to the issuance of a credential;
2. Following the expiration of a credential; or
3. Prior to the reinstatement of a credential.

68-018.01 Evidence of Practice: The Department will consider any of the following conditions as prima facie evidence of practice without a credential:

1. The person admits to engaging in practice;
2. Staffing records or other reports from the employer of the person indicate that the person was engaged in practice;
3. Billing or payment records document the provision of service, care, or treatment by the person;
4. Service, care, or treatment records document the provision of service, care, or treatment by the person;
5. Appointment records indicate that the person was engaged in practice; and
6. The person opens a business or practice site and announces or advertises that the business or site is open to provide service, care, or treatment.

For purposes of this regulation prima facie evidence means a fact presumed to be true unless disproved by some evidence to the contrary.

68-018.02 Penalty: The Department may assess an administrative penalty in the amount of \$10 per day, not to exceed a total of \$1,000 for practice without a credential. To assess such penalty, the Department will:

1. Provide written notice of the assessment to the person. The notice must specify:
 - a. The total amount of the administrative penalty;
 - b. The evidence on which the administrative penalty is based;
 - c. That the person may request, in writing, a hearing to contest the assessment of an administrative penalty;
 - d. That the Department will within 30 days following receipt of payment of the administrative penalty, transmit the penalty to the State Treasurer for credit to the Permanent School Fund;
 - e. That an unpaid administrative penalty constitutes a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the District Court of the county in which the violator resides or owns property; and

2. Send by certified mail, a written notice of the administrative penalty to the last known

address of the person to whom the penalty is assessed.

68-018.03 Administrative Hearing: When a person contests the administrative penalty and requests a hearing, the Department will hold a hearing pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920 and 184 NAC 1.

Approved by the Attorney General:	December 13, 2004
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